

REMARKS

The Office Action alleges that Yanagihara *et al.* (2002) *PNAS* 99, 11317-11321 ("Yanagihara") is a 102(b) reference against the present claims. However, applicants point out that the publication date of the reference, as indicated on the first page of the reference, was August 20, 2002, and that the reference was submitted to the journal for review on July 5, 2002. The present application claims priority to U.S. Provisional Application 60/457,934, filed March 28, 2003, and therefore has an effective filing date of March 28, 2003. Accordingly, the publication date of the reference is less than one year after the effective filing date (and even the date of submission of the reference is less than one year after the effective filing date). Therefore, the reference can at most be considered a 102(a) reference, rather than a 102(b) reference.

The authors of the cited reference (Yanagihara and Mizuuchi) are identical to the inventive entity of the present application. Therefore, in view of the fact that the reference was published less than one year after the effective filing date of the present application, the reference does not constitute prior art against the present claims. The anticipation rejection over this reference should be withdrawn.

In the obviousness rejections, made over Yanagihara plus additional references, the additional references do not remedy the deficiency of Yanagihara. Therefore, the obviousness rejections, too, should be withdrawn.

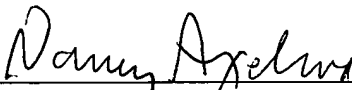
Furthermore, applicants request that claim 32 (from Group II, directed to an *in vitro* reaction mixture present during the performance of the claimed method) and claims 33-35 (Group III, directed to a kit used for performing the method) be rejoined to claims 1-31, once these claims have been deemed allowable, pursuant to the *In re Ochiai*, 37 USPQ 2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 37 USPQ2d 1663 (Fed. Cir. 1996) decisions, and MPEP 821.04. The *in vitro* reaction mixture of claim 32 has presumably already been searched during the search of claims 1-31, as have the components of the kit of claims 1-31. Therefore, no additional search needs to be performed, so there is no search burden upon the Examiner. The scope of claims 32-35 is not greater than the scope of claims 1-31.

In view of the preceding arguments, it is believed that the application is in condition for allowance, which action is respectfully requested.

No fee is believed to be due with this response. However, the Commissioner is hereby authorized to charge any fees association with this response or credit any overpayment to Deposit Account No. 22-0261, citing Docket No. 31978-201641.

Respectfully submitted,

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